

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**ANNA WURTZBURGER,**

**Plaintiff,**

**vs.**

**KENTUCKY FRIED CHICKEN,**

**Defendant.**

**Civ. No.**

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that defendant Kentucky Fried Chicken (“KFC”), by and through its attorneys Reed Smith LLP, hereby removes this action, pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446, from the Supreme Court of the State of New York, County of Dutchess, to the United States District Court for the Southern District of New York. In support of this Notice of Removal, KFC states the following:

1. On September 29, 2016, plaintiff commenced an action in the Supreme Court of the State of New York, Dutchess County, captioned *Anna Wurtzbarger v. Kentucky Fried Chicken*, Index No. 20162125. A true and correct copy of the Summons and Complaint is attached as **Exhibit 1**, which constitutes all pleadings and process in this action.

2. The Summons and Complaint asserts claims against KFC for alleged violation of New York General Business Law Sections 349 and 350, which prohibit deceptive trade practices and false advertising. Compl. ¶¶ 3-18.

3. On October 18, 2016, KFC accepted service of a copy of the Summons and Complaint.

4. KFC believes that plaintiff's claims are without merit.

5. KFC has not made any filings in the state court action.

6. This Notice of Removal is being filed in the United States District Court for the Southern District of New York, the district in which the case is pending.

7. This Notice of Removal is being filed within thirty days of defendant's receipt of service of the Summons and Complaint, as required by 28 U.S.C. § 1446(b).

8. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a)(1), because this is an action between citizens of different States, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

#### **DIVERSITY OF CITIZENSHIP**

9. The Complaint alleges that plaintiff's place of residence was at all relevant times Dutchess County, New York, thereby making her a citizen of the State of New York for diversity purposes. *See Diego Beekman Mut. Hous. Ass'n Hous. Dev. Fund Corp. Hd'c. v. Dish Network, L.L.C.*, No. 15 Civ. 1094, 2016 WL 1060328, at \*7 (S.D.N.Y. Mar. 15, 2016) (“[A]n individual's residence at the time a lawsuit is commenced provides *prima facie* evidence of his domicile’ – which in turn determines citizenship.” (quoting *Willis v. Westin Hotel Co.*, 651 F. Supp. 598, 601 (S.D.N.Y. 1986))).

10. “A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). KFC is a Delaware corporation with its principal place of business located in Louisville, Kentucky. *See KFC Corp. v. Tex. Petroplex, Inc.*, No. 11-CV-00479, 2012 WL 4760848, at \*1 (W.D. Ky. Oct. 5, 2012) (“The plaintiff in this action is KFC Corporation . . . which is a Delaware Corporation with a principal place of business in Louisville,

Kentucky.”); *Wallace v. Kentucky Fried Chicken*, No. 08-248-KD-B, 2008 WL 4531773, at \*5 n.6 (S.D. Ala. Oct. 9, 2008) (“KFC is a citizen of Delaware with its principal place of business in Louisville, Kentucky.”); *KFC Corp. v. Lilleoren*, 783 F. Supp. 1025, 1026 (W.D. Ky. 1992) (stating that KFC is “a Delaware corporation with its principal place of business in Louisville, Kentucky”).

11. Plaintiff is a New York citizen and defendant is a citizen of Delaware and Kentucky. As a result, the parties are completely diverse pursuant to 28 U.S.C. § 1332(a).

### **AMOUNT IN CONTROVERSY**

12. Diversity jurisdiction under 28 U.S.C. § 1332 also requires that the amount in controversy, exclusive of interest and costs, be in excess of \$75,000.

13. The Complaint demands \$20,000,000 in monetary damages. Compl. ¶ 18.

### **CONCLUSION**

14. Complete diversity exists between plaintiff, a citizen of New York, and KFC, a citizen of Delaware and Kentucky, and the amount in controversy exceeds \$75,000. Accordingly, this Court has original jurisdiction over this action under 28 U.S.C. § 1332(a).

15. KFC will provide plaintiff with prompt written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d) and will file a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Dutchess, where the Complaint was originally filed.

WHEREFORE, KFC requests that this action be removed from the Supreme Court of the

State of New York, Dutchess County, to the United States District Court for the Southern  
District of New York.

Dated: October 19, 2016  
New York, New York

Respectfully submitted,  
**REED SMITH LLP**

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